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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia* ** ***

Summary

In the present report, the United Nations High Commissioner for Human Rights welcomes the efforts of the Government of Colombia to meet its human rights obligations and the progress made in the pursuit of a negotiated end to the internal armed conflict.

The High Commissioner describes how sustainable peace will require substantial efforts to overcome inequalities in access to political and economic rights and public services. He also highlights the need to address past violations, including extrajudicial executions.

The report includes 11 recommendations.

* The summary of the present report is being circulated in all official languages. The report itself, which is annexed to the summary, is being reproduced in English and Spanish only.

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*** Late submission.

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Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia

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I. Introduction

1. In October 2014, the Government of Colombia and the United Nations High Commissioner for Human Rights renewed, to 31 October 2016, the 1996 agreement that established the country office of the High Commissioner in Colombia (OHCHR-Colombia). While reiterating the original mandate, the High Commissioner and the Government agreed that, should an agreement for the termination of the conflict between the Government and the Revolutionary Armed Forces of Colombia–People's Army (FARC-EP) be signed, cooperation could be reformulated to include support to implement relevant aspects of the peace accords.

2. OHCHR has offices in Bogota, Barranquilla, Bucaramanga, Cali, Quibdó, Medellín, Neiva, Pasto and Villavicencio, prioritizing work in approximately 80 communities, mostly in rural areas affected by the armed conflict. OHCHR-Colombia continued to contribute to positive change through its monitoring, advocacy, public statements, good offices and technical cooperation. It submitted periodic reports to government entities; acted as a facilitator in conflicts affecting the rights of vulnerable communities; interacted daily with the State and civil society to find solutions to human rights challenges; and contributed to strengthening institutions.

3. In 2014, the OHCHR-Colombia reviewed its operations to transition from scenarios of armed conflict to post-conflict scenarios. Its new agenda prioritizes activities on support for victims of violations, land restitution, reparation, transitional justice, social dialogue and other post-conflict issues, aimed at empowering communities and increasing the impact of its advocacy with national and local authorities. In 2014, OHCHR conducted a study documenting how the Government's cooperation with the United Nations human rights system has contributed to the improvement of the human rights situation in Colombia over the past 16 years.

II. Context

A. General

4. In March and May 2014, legislative and presidential elections were held. President Juan Manuel Santos was re-elected to a second four-year term and sworn in on 7 August.

5. Peace negotiations with FARC-EP continued in 2014. On 10 June, the Government and the National Liberation Army (ELN) announced that they had begun talks seeking to establish a general agreement to initiate peace negotiations.

6. Two years into the peace negotiations, the Government and FARC-EP have made unprecedented progress towards ending five decades of armed conflict. In September, they made public the preliminary agreements reached on rural reform, political participation and illicit drugs. The parties also created a gender subcommission to review the agreements from a gender perspective. The agreements make it clear that sustainable peace would be pursued through rights-based structural changes focused on improving the lives of those affected by the conflict. The peace negotiations encountered obstacles, including tensions between institutions and political parties. On 16 November, the President suspended the talks following the capture by FARC-EP of an army general and other military and related personnel. Following the release of the captives, the parties agreed to resume talks on 10 December.

7. In 2014, the negotiators began discussions on the agenda item on victims of human rights and international humanitarian law violations during the conflict. In a joint statement

outlining 10 principles to guide the discussion, the Government and FARC-EP acknowledged that peace could only be achieved based on the recognition of past human rights violations, on efforts to restore the rights of victims and on the participation of victims in the peace process.[1] The statement was followed by forums on and for victims and by the unprecedented decision to hear, in person at the negotiating table, the testimonies of 60 victims of violations committed by all parties.[2] The process ensured that victims invited to speak represented geographic, ethnic, gender, age and sexual orientation diversity. The United Nations system (including OHCHR), the National University of Colombia and the Catholic Church contributed to the organization of victims' forums and their participation in the peace process. The High Commissioner considers that the participation of victims is a means to empower and reframe them as survivors, rights holders and contributors to peace. The restoration of their rights can transform the conditions that contribute to the conflict. A negotiated end to the conflict could greatly improve the human rights situation, not only by bringing an end to violence and conflict-related violations, but also by addressing issues such as rural development and political participation.

8. Building on past Colombian efforts to learn from other international experiences, mechanisms under discussion for the disarmament, demobilization and reintegration of members of armed groups should take into account the lack of success in other peace processes in preventing demobilized fighters from being recruited by criminal organizations or armed groups. Priority attention should be given to the demobilization and reintegration of children, preferably through an action plan that takes into account problems of access to education and health care in most of rural Colombia and the risks of re-victimization or recruitment by other groups.

9. Displacement continues, with yearly averages of 250,000 displaced persons since 2010. Indigenous peoples and Afro-Colombians suffer disproportionally from displacement, even in urban areas such as Buenaventura and Tumaco. Violence in marginalized areas of large and medium-sized cities limits the availability of safe zones for relocation and perpetuates the displacement crisis.

B. Government and State institutions

10. OHCHR-Colombia collaborates with a wide range of State institutions, building partnerships that contribute to improving the human rights situation, including with local authorities in prioritized communities. The Colombian Constitution and national laws provide a robust human rights framework that is, however, unevenly implemented across the country. Unwillingness to accept responsibility for past extrajudicial executions has undermined progress. Further progress has also been impeded by formalism and bureaucratic hurdles.

11. OHCHR-Colombia continues to support the National Human Rights and International Humanitarian Law System created in 2011.[3] In September 2014, the Government restructured its human rights programme, repositioning it directly in the Presidency.[4] A Minister-Counsellor on Post-conflict, Human Rights and Security was appointed and a Human Rights Advisory Office was created under the Minister-Counsellor, replacing the Presidential Human Rights Programme. It is too early to determine the impact

[1] Joint communiqué, 7 June 2014. https://www.mesadeconversaciones.com.co/.
[2] Joint communiqué, 17 July 2014. https://www.mesadeconversaciones.com.co/.
[3] Decree 4100/2011.
[4] Decree 1649/2014.

of the abolishment of the presidential programmes for the comprehensive development of the indigenous populations and for the Afro-Colombian, Negra, Palanquera and Raizal populations but OHCHR will continue to monitor developments.

12. The High Commissioner appreciates the work of the Ombudsperson's Office (*Defensoría del Pueblo*). Its interventions at a regional level, for example in the Chocó department,[5] carried out jointly with OHCHR and other United Nations agencies, were good examples of cooperation.

13. OHCHR-Colombia continued to work with the municipal ombudsperson's offices (*personerías municipales*), providing advice and capacity-building to the National Federation of Municipal Ombudspersons and direct support in prioritized communities. Municipal ombudsperson's offices have critically insufficient human and material resources. A proposed 2014 reform to address those shortcomings failed. The High Commissioner considers it important to strengthen both the Ombudsperson's Office and municipal ombudsperson's offices, given their capacity to work throughout the country and their potential to contribute to post-conflict peacebuilding.

III. Human rights situation

A. Overview of the human rights situation

14. The human rights context in Colombia is complex and multilayered. The country has historically been characterized by asymmetric economic power and unequal access to rights and public services. The 50 years of armed conflict have deeply divided the population and created a culture of allies and enemies. The State has at times turned a blind eye to violations committed by perceived allies, while viewing other sectors as possible enemies, reinforcing patterns of inequality and alienation. Another layer is the modern and growing Colombia, where rights and equality before the law are the predominant values. For example, 25 years ago, urban middle-class human rights defenders would often be considered enemies of the State as the armed conflict dominated mindsets. That has now changed for many urban defenders. However, many rural human rights defenders still confront hostility and a counter-insurgency construct. It is important to understand the continuing dynamics between the layers, each dominated by different constructs (rule of law, armed conflict, socioeconomic exclusion), to better facilitate positive human rights change.

15. State presence is unequal in different geographic areas and social strata, affecting the enjoyment of all human rights. The most economically developed parts of Colombia, best represented by prosperous areas of Bogota and other major cities, are vibrant and an economic and cultural reference in the continent. Other realities are dominant in much of rural Colombia, marginalized urban areas, ethnic communities, remote mining outposts and areas affected by armed conflict and crime. This "other Colombia" suffers most from violence, displacement, unequal access to health care, education, water, security, justice and other services. It is still grounded on the discourses of armed conflict and socioeconomic exclusion.

[5] Office of the United Nations High Commissioner for Refugees, OHCHR, Office for the Coordination of Humanitarian Affairs, press release: http://reliefweb.int/sites/reliefweb.int/files/resources/ACNUR%20ONU%20Derechos%20Humanos%20y%20OCHA%20reiteran%20su%20preocupacion.pdf.

16. Basic access to health care and to education are recognized rights under Colombian law, yet their distribution is skewed in favour of prosperous areas, when in fact those services are necessary to break down existing inequalities. Even within a single department, there is a striking difference between services available in different municipalities that goes beyond the normal rural-urban divide. For instance, in the Department of Magdalena, 68 per cent of a specific basket of public services are concentrated in the municipality of Santa Marta, while 21 of the remaining 29 municipalities are each home to less than 1 per cent of this basket of services.[6] Differences with respect to violence are also noteworthy, even within a single city. For instance, in Cali, a city with one of the highest murder rates, murders tend to be concentrated in specific neighbourhoods. By opening new offices, OHCHR seeks to partner more effectively with the Government to help transform those areas affected by conflict, violence and poverty.

17. Until these inequalities are addressed, human rights challenges will continue to plague Colombia. Economic growth and resource exploitation can have negative impacts, such as water scarcity, cultural decay, social conflict and environmental damage. This affects the rights of vulnerable rights holders without being balanced by other positive aspects such as infrastructure and public services, which tend to be concentrated in the booming cities. Inequality goes well beyond socioeconomic rights and squarely violates political rights, since those marginalized rights holders have reduced possibilities to influence decisions that affect them. Structurally, the vibrant cities have greater political power due to their populations and budget. Cases of corruption and links between local economic elites and criminal networks further undermine the rights to political participation and prior consultation that are designed to level the playing field.

18. Innovative approaches[7] are needed for all Colombians to share the benefits and costs of economic development; there is a need to prioritize expenditure of income generated from economic development to progressively reduce the gaps in human rights enjoyment. The exercise of economic, social and cultural rights should not be determined by place of residence,[8] whether a person lives in an urban or rural area, in a prosperous suburb or in an ethnic community.

19. The prospects of a negotiated end to the armed conflict and economic growth provide a unique opportunity to expand State presence, address inequality and improve enjoyment of all human rights. This effort would require the commitment of all State actors, with the support of demobilized armed groups and all society. Peace would also require a culture of tolerance that defuses political polarization. Colombia is large enough to accommodate different visions of development: exploitation of mineral resources, industrialized agribusinesses and large-scale energy production can co-exist with community-based mining, family farming, protection of traditional cultures of indigenous and Afro-Colombian communities, and environmental protection.

1. Economic, social and cultural rights

20. Progress made in fighting poverty will be limited until efforts also address discrimination and inequality. Rural dwellers, indigenous peoples, Afro-Colombians,

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[6] National Planning Department, *Visión Magdalena 2032: Un mundo de oportunidades*, p. 48. https://pwh.dnp.gov.co/Programas/DesarrolloTerritorial/OrdenamientoyDesarrolloTerritorial/Planificaci%C3%B3nEstrat%C3%A9gica/VisionesdeDesarrollo.aspx.

[7] For example, alternative means to bring education (virtual classes), energy supply or health services to remote locations.

[8] Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 34.

women and children face the greatest obstacles to enjoying their economic, social and cultural rights. According to the National Department of Statistics (DANE), 24.8 per cent of the population lives in poverty.[9] In urban areas, the poverty rate is 18.5 per cent, while in rural areas it is 45.9 per cent. Colombia is an upper-middle-income country, but one of the most unequal in the region.

21. Chocó Department, populated mostly by Afro-Colombians (82.1 per cent) and indigenous peoples (12.7 per cent),[10] provides a blatant example of inequality. Chocó has the highest percentage of population in monetary poverty: 63.1 per cent, in contrast with Bogota, which has the lowest percentage, at 10.2 per cent.[11] Those living in rural areas suffer most from the negation of rights that characterizes poverty.

22. OHCHR-Colombia has offered assistance with Department for Social Prosperity initiatives aimed at improving the enjoyment of economic, social and cultural rights. Those include More Families in Action (Más Familias en Acción), a cash transfer programme for families, conditioned upon children's enrolment in school and having medical check-ups. The United Network (Red Unidos) strategy, involving inter-institutional coordination, assists extremely poor families through family and community support. Since poverty unequally affects women,[12] it is commendable that the More Families in Action programme pays subsidies directly to women and includes benchmarks on women's health and violence against women. Regretfully, children with cognitive disability do not have access to the subsidies because they do not enter the educational system. In 2015, OHCHR-Colombia hopes to develop its work with the National Agency for the Eradication of Extreme Poverty.

23. OHCHR notes that, particularly in rural areas, health services do not achieve minimum standards of availability, access, acceptability and quality. For example, Afro-Colombians and indigenous children in Chocó Department continue to die of preventable and treatable diseases, such as gastroenteritis and respiratory infections, owing to obstacles in access to adequate health services, clean water and basic sanitation. The maternal mortality rate in the department is 341.63 per 100,000 live births, while in Bogota it is 42.05. Mortality of children under one year is 42.69 per 1,000 live births in Chocó, compared to 12.88 in Bogota.[13]

24. The Ombudsperson's 2014 special report on Chocó noted that at least 95 indigenous children under the age of five died of acute diarrhea, some belonging to communities of people who returned to the Alto Andagueda area following land restitution.[14] In Riosucio municipality, the OHCHR-Colombia collected information on nine children who died from acute diarrhea or respiratory infections between July 2013 and August 2014. The office is working with the Ombudsperson's Office, the Victims Unit and others to address the situation.

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[9] DANE, "Pobreza monetaria y multidimensional 2013", 4 September 2013. https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/cp_pobreza_13.pdf.

[10] DANE, "La visibilización estadistica de los grupos étnicos colombianos", https://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf.

[11] DANE, press release, 11 July 2014. https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/cp_pobreza_departamentos_R2013.pdf.

[12] DANE, "Pobreza monetaria y multidimensional 2013", press bulletin, 21 March 2014. https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/bol_pobreza_13.pdf.

[13] Source: Ministry of Health and Social Protection.

[14] Ombudsperson's Office, "Crisis humanitaria en Chocó 2014 : Diagnóstico, valoración y acciones de la Defensoria del Pueblo", p. 59. www.defensoria.gov.co/public/pdf/crisisHumanitariaChoco.pdf.

25. The High Commissioner stresses how important it is that the State, in accordance with its international obligations, invest to the maximum of its available resources[15] in guaranteeing economic, social and cultural rights without discrimination.

26. Lack of political participation in decisions affecting those living in areas of mineral exploitation, especially indigenous and Afro-Colombian communities, continues to lead to social unrest. Their right to prior consultation with regard to economic projects implemented in their territories is still widely ignored. Although Colombia recognizes international law, some high-level government officials have also publicly presented prior consultation rights as an obstacle to development. Government legislative proposals to regulate consultations limit the right of participation in the procedures for obtaining permits and exploitation licences with regard to resource extraction and construction of infrastructure in ethnic territories.

27. Large-scale economic activities, such as mining, raise concerns due to their environmental and social impact, including pollution of water sources that affects food production. Some ethnic communities have attributed increased child mortality in recent years to mining that affects the water in their territories. There is a need for more transparency, as well as scientific capacity to conduct adequate environmental impact studies that are made accessible to State entities, such as the Ombudsperson's Office, and to the public.

28. There has been a lack of significant progress in the 124 territorial protection petitions made by ethnic communities through Constitutional Court mechanisms.[16]

29. Importantly, the Government and ethnic communities have nonetheless opened and maintained dialogue. OHCHR-Colombia often facilitates that dialogue at national and regional levels.

30. Social protests in 2014, such as the National Agrarian Strike and the Mining Strike, were addressed by the Government through dialogue and negotiation. The agrarian negotiating platform (Mesa Única Nacional de la Cumbre Agraria, Étnica, Campesina y Popular) brought together different rural movements in a national dialogue with the Government. OHCHR-Colombia was asked to facilitate, moderate and provide technical verification for the platform's subcommission on human rights and guarantees. The office also played a role in local and regional negotiating platforms. It facilitated agreements in Cauca between the National Indigenous Organization of Colombia and the Government, and assisted, and promoted international standards in, the Mesa de Putumayo, Mesa Minera Nacional and Mesa Minera del Chocó negotiating platforms. Those processes have created a positive change in the relations of social movements with the Government, although progress in obtaining and implementing agreements is mixed.

31. In July 2014, the Presidential Programme for Human Rights launched national guidelines on businesses and human rights.[17] Nevertheless, a public policy to define the legal framework for business respect for human rights is still required and will be even more pressing given the central role that the private sector should have in the sustainability of peace efforts. Clear guidelines on environmental protection, prior consultation and labour rights, as well as business commitments to the progressive advancement of economic, social and cultural rights, are also needed.

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[15] International Covenant on Economic, Social and Cultural Rights, art. 2.

[16] Ethnic Protection Road Map, Orders 4 and 5 of 2009.

[17] Available from http://historico.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/140724-lineamientos-politica_web.pdf.

32. Corporate initiatives for human rights integration into business operations, such as the Global Compact, Guías Colombia (an initiative bringing together businesses, civil society and Government) and the Mining and Energy Committee for Security and Human Rights, were strengthened in 2014, showing a growing trend for businesses operating in Colombia to embrace the Guiding Principles on Business and Human Rights. OHCHR-Colombia contributed to the Guías Colombia initiative by supporting the production of the Guidelines on Decent Work and Land Acquisition.

33. Despite such progress, conflicts between businesses and communities persisted at the local level. Some communities claimed that their economic, social, cultural and environmental rights had been curtailed by oil, mining and power generation projects. OHCHR-Colombia promoted dialogue between businesses and communities, observing progress in the commitment of certain corporations. However, businesses need to integrate the human rights perspective in their operations and business plans so that they take into account human rights concerns and include preventive and mitigating measures. The office is developing pilot projects on these issues, for example in El Bagre, Antioquia.

2. Victim reparation and land restitution

34. The High Commissioner welcomes the third year of implementation of the Victims and Land Restitution Law (Law 1448/2011) and the decrees on reparation to indigenous peoples, Afro-Colombians and Roma.[18] It commends the work of the Victims Unit and the Land Restitution Unit. In 2014, OHCHR-Colombia submitted five reports to the Units, and contributed to building dialogue and consensus between victims and institutions in prioritized communities.

35. The above-mentioned legislation has the potential to transform the situation of uneven development and armed conflict. While the vast dimension of the challenge is recognized, there is some reluctance to acknowledge the myriad of difficulties faced in coordinating a vast array of government and state entities at the local and national levels, with differing capacities and political will, to implement the law. Measures of success appear largely focused on number of people served, rather than on the transformative impact on institutions, lives and society. The Victims Unit has excelled at providing assistance to a record number of victims. The Land Restitution Unit and specialized tribunals produced 723 restitution decisions between 2012 and October 2014.

36. In order to overcome ingrained resistance in some areas, competent authorities need to act with resolve and dedicate sufficient resources. They also need to empower communities by involving them more actively and to incorporate a gender perspective into land access and return policies. There has been revictimization in the absence of real guarantees of non-recurrence. Political and bureaucratic resistance at local levels will continue insofar as economic incentives behind illegal occupation of land persist (for example, the continued ability of some to profit from production on such land). Society as a whole can contribute to eliminating those economic incentives. For instance, consumers could express their choice for agricultural products from areas not affected by land grabs if a proper product-labelling system were implemented. Foreign capital, development aid and countries with trade agreements with Colombia should take these problems into account when designing investment plans or import regulations, particularly considering that often the production in occupied lands is export-related (banana, palm oil, minerals).

37. The High Commissioner welcomes the first land restitution decision issued by courts concerning an indigenous community, the Embera Katio in Alto Andagueda,

[18] Decrees 4633/2011, 4634/2011 and 4635/2011.

Chocó.[19] The return of displaced communities living in Medellín, Antioquia, to their areas of origin in La Puria, Carmen de Atrato, Chocó, is an example of coordination between local authorities and the Victims Unit of Chocó, and of a more empowering and simple procedure that integrates a differential approach. The High Commissioner calls for further progress in land restitution for ethnic groups.

38. The High Commissioner welcomes regulatory progress in the recognition of the rights of women to access land,[20] as well as the incorporation of international standards on women rights into some land restitution judgements. He also welcomes the adoption, in June, of Law 1719/2014 on access to justice for victims of sexual violence, in particular that related to the armed conflict. The Government also declared 25 May the national day for the dignity of women victims of sexual violence in the internal armed conflict.

39. In prioritized communities where land restitution processes are taking place, OHCHR-Colombia conducts advocacy work with authorities to guarantee the rights of participants. Rights of secondary occupants (third parties occupying land who were not involved in forced dispossessions), although already recognized in Colombian legislation, should be further protected in line with international principles on restitution and the return of victims of forced displacement.

40. Frequent death threats against land activists and related impunity should be firmly addressed. In Chocó, security concerns have prevented ethnic communities from returning to their lands. Claims that activists have links with insurgency are often given more attention and resources than cases in which they are victims. In the Caribbean region in 2014, only one investigation of a threat resulted in preliminary charges; the person charged was the alleged victim. The return of former paramilitaries following their release after serving the maximum jail time stipulated by the Justice and Peace Law (Law 975/2005) must be carried out in a way that favours their reintegration into society. In this light, it is hoped that the programme developed by the Ministry of Justice to facilitate reintegration taking into account security and other challenges will be successful.

41. OHCHR-Colombia highlights the role of the Monitoring Committee for Law 1448/2011, comprising the Comptroller, the Counsel-General, the Ombudsperson and victims' representatives, as a mechanism for ensuring the law's implementation. It also notes the importance of compliance by relevant institutions with the recommendations contained in its 2014 report.

3. Human rights and international humanitarian law violations related to the armed conflict: armed forces

42. OHCHR-Colombia documented violations of the right to life that the army continues to qualify as "military errors". On 4 March, in Las Bancas de Arauquita, Arauca, a young farmer was killed in a military operation by the Quirón Joint Task Force. On 1 May, in Villa Fátima, Anorí, Antioquia, one farmer was killed and another was injured by soldiers from the Bombona Battalion. On 26 September in Chamizo, Guachené, Norte del Cauca, a farmer was killed at a Third Brigade checkpoint and, reportedly, there were attempts to hide the body. The High Commissioner reminds the State that, when a civilian is killed during military operations, classification of the incident as an unavoidable military error must be made through a judicial decision based on objective impartial investigations. The State has the obligation to provide reparation to victims, independently of disciplinary measures or criminal proceedings. The High Commissioner considers it crucial that the

[19] Special Land Restitution Chamber, Superior Court of Antioquia, decision 007/2014, 23 September.

[20] See resolution 80/2013 of the Land Restitution Unit.

Ministry of Defence strengthen its capacity to conduct timely, independent and transparent investigations and that it deal with complaints from the perspectives of both individual and State responsibility.

43. The United Nations uses the terms "extrajudicial, summary or arbitrary executions" for a wide range of violations of the right to life; among them, but not exclusively, the killings committed by military personnel with the aim of inflating statistics, known as "false positives". In 2014, OHCHR-Colombia did not document any cases of "false positives". However, it documented other cases in which the armed forces attempted to disguise victims of arbitrary killings as enemy combat casualties or rearranged the crime scene to make it appear as self-defence. For example, on 23 February in San Pablo, Bolívar, a man was shot dead by members of the Marte Joint Task Force. It was alleged that the killing had been in self-defence after the man, supposedly a guerrilla, shot at the soldiers. Forensic reports suggest that the man did not use a firearm. On 2 August, in Las Nieves, Apartadó, Antioquia, a 17-year-old girl died from two bullets in her back during an operation against FARC-EP by members of Mobile Brigade No. 24, Seventh Division. No elements were found to suggest that she was a FARC-EP member.

44. Despite efforts that have been made, the High Commissioner is concerned about the lack of adequate recognition and effective coordination between military forces and indigenous authorities, and recalls the importance of Directive 16/2006, Policy of Recognition, Prevention and Protection of Indigenous Communities, which provides for coordination mechanisms that should be adhered to by all forces operating in indigenous territories.

4. Human rights and international humanitarian law violations related to the armed conflict: organized armed groups

(a) Revolutionary Armed Forces of Colombia – People's Army

45. The High Commissioner reiterates his full support for the peace negotiations in Havana between the Government and FARC-EP. He reminds FARC-EP of its obligation to respect human rights and international humanitarian law, and to protect in particular the civilian population and infrastructure, and those who do not participate, or have ceased to participate, in hostilities. In 2014 OHCHR-Colombia registered cases of use of indiscriminate explosive devices that caused death or injury to civilians, and other prohibited methods of war, as well as killings of wounded civilians and the use of children in hostilities.

46. On 30 April, in San Calixto, Norte de Santander, a female teacher and a young girl were seriously injured when elements of the 33rd Front of FARC-EP threw an indiscriminate explosive device at a police station. On 14 May, the FARC-EP Daniel Aldana Mobile Column threw hand grenades at the football pitch in Chilvi, Tumaco, Nariño, where police officers were playing, killing two children, aged 12 and 13, and injuring eight policemen. Initial reports that children participated in the attack turned out to be false. The use of indiscriminate explosive devices by the FARC-EP Gabriel Galvis Mobile Column on 30 July resulted in the death of a two-year-old girl in her home in Calandaima, Miranda, Cauca.

47. On 26 April, in Ituango, Antioquia, an ambulance transporting one sick and one injured person was intercepted by members of the 18th Front of FARC-EP, who killed the injured man. On 10 March, between Florencia and Montañita, Caquetá, FARC-EP members dressed as road maintenance workers attacked an army patrol, killing four soldiers and injuring nine civilians (among them two 17-year-old children and one three-month-old baby) in the crossfire. The High Commissioner reminds FARC-EP that international law prohibits killing those wounded who do not participate in hostilities and attacking medical

vehicles and obliges all parties to take all feasible precautions, taking into account the principles of military necessity, distinction and proportionality.

48. On 10 April, in Convención, Norte de Santander, a community leader was killed, allegedly by FARC-EP, after he challenged the control of the group over the area. On 3 March, in La Mina, Cauca, an indigenous language teacher was killed. While the identity of the perpetrators has not been ascertained, the man had previously received threats from FARC-EP. On 5 November, in Toribio, Cauca, FARC-EP members killed two Nasa indigenous guards. In March, in Tarra, Norte de Santander, an activist working in the field of lesbian, gay, transgender, bisexual and intersex rights was reportedly threatened by FARC-EP and had to flee the town.

49. The use of children by FARC-EP persisted during 2014 and has disproportionately affected children from ethnic communities. In one *cabildo* (indigenous authority and its community) alone, OHCHR-Colombia received reports of 48 cases of recruitment of Nasa children, allegedly by the 6th Front of FARC-EP.

(b) National Liberation Army

50. ELN has committed human rights and international humanitarian law violations, including killings of protected persons and the use of children. On 11 May, in Tame, Arauca, alleged ELN members entered the Parreros indigenous reserve and killed two men. On 3 June, in Saravena, Arauca, during an attack with explosives and gunfire, ELN reportedly executed four policemen who were hors de combat. Also in Saravena, on 12 August, the Secretary of Social Development and his bodyguard were shot dead. ELN claimed responsibility and accused the victims of challenging the group's power in the region. On 29 June, in Caño Limón, Arauca, 13 people in a church service within an oil complex were injured in an attack with explosive devices. The same day, between Pitalito and La Luna-1, Cesar, ELN kidnapped a geologist, whom they held captive until 26 August. A fisherman and his 13-year-old daughter were intercepted on the Apartadó River on 26 August and deprived of their liberty. The girl was released four days later but her father was disappeared and is presumed dead. On 12 September, in Alto Baudó, Chocó, ELN allegedly killed two Embera Dovida leaders from El Morro and Puerto Alegre. On 14 September, in Norte de Santander, ELN snipers killed two oil contractors repairing infrastructure. ELN accepted responsibility, attributing the attack to a judgement error by the commander in charge. ELN continued using children: OHCHR-Colombia documented cases in Antioquia, Arauca and Chocó.

B. State response to human rights violations

1. Response to past human rights violations

51. Addressing past violations is a cornerstone in the construction of a post-conflict Colombia. Justice, truth, reparation and guarantees of non-recurrence for gross violations of human rights law and serious violations of international humanitarian law by all actors, promoted through judicial and extrajudicial mechanisms, are necessary for national reconciliation and sustainable peace.

52. The State has already taken some steps towards providing a judicial response for past violations committed by non-State armed groups. Non-governmental organizations indicate there are between 2,200 and 3,000 guerrilla members serving prison terms for a variety of crimes, and most guerrilla leaders have received sentences in absentia.

53. OHCHR-Colombia takes note of the restructuring of the Attorney General's Office (Fiscalía General de la Nación),[21] aimed at modernizing and increasing efficiency in the prosecution of organized crime and systemic crimes through strategic analysis and case prioritization. Proper incentives and a culture change for prosecutors and investigators, away from counterinsurgency dynamics to one where all victims are equal before the law, are needed to make further progress.

54. Criminal investigations of community leaders for their alleged connection with armed groups, despite insufficient grounds for prosecution, were recurrent. In the context of the peace talks, this questionable strategy reduces the pool of social interlocutors. For instance, a peasant leader in Montes de María, Bolívar, with experience in community reconciliation in the Alta Montaña process has been awaiting trial since 9 September 2013 on charges related to alleged links with FARC-EP. In Curumaní, Cesar, a lawyer who was very active during social mobilizations was arbitrarily arrested by police on 9 August, reportedly in execution of a warrant. He was released when prosecutors confirmed there was no such warrant.

55. Regarding the State response for violations committed by its agents, in recent years, OHCHR-Colombia has conducted in-depth analysis of the "false positive" executions. Those consisted of the killing of civilians by army members who reported the dead as fallen enemy fighters for the purpose of improving kill statistics, in turn obtaining financial benefits, leave, promotions and other benefits. The Attorney General's Directorate for Human Rights and International Humanitarian Law had, by September 2014, opened 2,234 investigations against 5,014 members of the armed forces for aggravated murder or murder of a protected person, concerning 4,382 victims (3,989 men, 231 women, 162 unidentified). A number of the cases may not have sufficient merit or proof to move forward. The Directorate does not deal with the whole universe of cases, as some are unreported while others are with other units within the Attorney General's Office or with the military justice system. The Attorney General's Office has successfully prosecuted 796 army members (103 commissioned officers, including six colonels, 123 non-commissioned officers, 566 soldiers and 4 members with no rank registered). The High Commissioner notes the efforts to investigate these cases and punish the perpetrators. However, a majority of investigations remain in an initial phase. Most prosecutions have focused on low-ranking personnel directly participating in the crimes and have not attempted to establish responsibility, by act or omission, of commanding officers, in accordance with international law standards.

56. An analysis of combat casualties and extrajudicial executions over a 10-year period (2002–2011)[22] shows a statistical correlation suggesting that actual combat figures and "false positives" were driven by the same incentives and performance-measuring standards. Both figures dropped dramatically when operational results criteria changed in late 2007 (see appendix). The high number of false positives (potentially 5,000 victims), the long period during which the phenomenon occurred (2002–2010), the number of units involved, the nature of the violation (right to life violated by extrajudicial execution of civilians), and the fact that the operations were planned, support the idea that these violations can be considered to be systematic under human rights law. This also raises serious questions regarding the responsibility of those in the line of command who either knew, or should have known, what was happening and did not take measures to address it.

[21] Decrees 16/2014 to 22/2014.

[22] Non-exhaustive figures of the Directorate for Human Rights and International Humanitarian Law of the Attorney General's Office.

57. In addition to the individual and command responsibilities for these crimes, the office notes that their systematic nature reflects structural weaknesses in the security institutions that should be addressed through transitional justice and security sector reform. The peace negotiations provide opportunities for such reforms. The State must define the future post-conflict role of the armed forces, taking responsibility for past violations into account and reconfiguring their functions and internal accountability mechanisms. Congress should open a debate on how to deal with past violations, define the structural changes needed and, for individual cases, clarify mitigating factors when meting out penalties (for example, recognition of responsibility, remorse, restoration of victims' rights and contribution to non-repetition) within the limits of international law.

58. The misguided belief by some in the armed forces that prosecutions for extrajudicial executions are part of a "judicial war" against them represents a major obstacle. Denial of responsibility by the armed forces and their political superiors perpetuates impunity, undermines institutional legitimacy and erodes the rule of law. In prosecutions of past violations all defendants have due process rights, including the right to appeal.

59. OHCHR-Colombia has looked into jurisdictional conflicts between ordinary and military justice in murder investigations concerning active members of the army: none of the 57 decisions rendered by the High Council of the Judiciary between January and August 2014 referred the case to the military courts. This qualitative change in the Court's jurisprudence is in conformity with international law.

60. Despite the Government's consistent commitment to legal reforms contributing to human rights, in the past two years the Ministry of Defence submitted to Congress five proposals to expand military justice. The Centro Democrático party submitted another two.[23] Five are under legislative debate and two were rejected by the Constitutional Court on procedural grounds.[24] United Nations and Inter-American human rights bodies have repeatedly stated that certain provisions are contrary to the international obligations of Colombia and ignore nationally and internationally defined limitations to military justice jurisdiction. Those under debate are of particular concern since they would extend military jurisdiction to investigate violations of human rights and international humanitarian law, including those already under investigation by ordinary justice. The bills include articles from a previous draft act (2/2012) criticized in 2013 by the Human Rights Committee of the United Nations (CCPR/C/107/2). In September 2014, 12 special procedures mandate holders of the Human Rights Council stated that the approval of those proposals would negatively affect the justice system and the rule of law.[25] OHCHR-Colombia reiterates its offer to advise authorities on needed military justice reform[26] in conformity with international standards.

61. The State has made progress in addressing some other past violations. On 28 October, the High Court of Bogota sentenced an army general to 35 years of

[23] Legislative Act 2/2012 (rejected on constitutional grounds); Statutory Bill 211/2013 (Senate), 268/2013 (House of Representatives) (rejected on constitutional grounds); Legislative Act 10/2014; Legislative Act 17/2014; Legislative Act 022/2014; Bill 85/2013 (Senate), 210/2014 (House of Representatives); Bill 129/2014 (House of Representatives).

[24] See, for example, OHCHR-Colombia, "Observaciones frente al proyecto de ley 85 de 2013", www.hchr.org.co/publico/pronunciamientos/ponencias/ponencias.php3?cod=150&cat=24.

[25] Open letter by special procedures mandate holders of the Human Rights Council to the Government and Congress of Colombia, 29 September 2014. See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=15116&LangID=E.

[26] OHCHR-Colombia, "Observaciones a los proyectos de acto legislativo N° 010 y 022 de 2014 Senado", www.hchr.org.co/publico/pronunciamientos/declaraciones/declaraciones.php3?cod=10&cat=25.

imprisonment, confirming a 2011 first-instance decision. The officer was found guilty of five enforced disappearances during operations to retake the Courthouse (Palacio de Justicia) from members of the M-19 group in November 1985.

62. The High Commissioner welcomes progress in the prosecutions for the psychological torture of a female journalist who was repeatedly threatened by the now defunct Administrative Security Department (DAS), an intelligence agency. In 2014, three former high-ranking DAS operatives pleaded guilty to aggravated torture in the case.

63. Allegations that a number of documents related to DAS illegal wiretapping of human rights defenders, journalists, political opposition members and civil servants were surreptitiously removed from the National Archives are of concern.

64. The High Commissioner considers that Government efforts to implement the Intelligence Law should be redoubled in order to ensure the legality and legitimacy of all intelligence operations. The recent hacking/wiretapping of political figures demonstrates that State intelligence agencies continue to be linked with illegal activities. The human rights spirit of recent intelligence legislation has yet to become the operational and doctrinal anchor for intelligence agencies.

65. On 9 September, a court in Barranquilla ordered the exclusion from the procedure and benefits of the Justice and Peace Law of a former paramilitary commander on the grounds that he did not confess to crimes of sexual violence. This is the first decision to exclude a beneficiary of the Justice and Peace Programme on the grounds of sexual violence. Moreover, following the killing of two transgender women on 4 and 8 December, the Attorney General's Office announced on 10 December strategies to investigate crimes against members of the lesbian, gay, transgender, bisexual and intersex community that might be motivated by the gender identity of the victims.

2. Situation of human rights defenders

66. OHCHR-Colombia continued to document violations against human rights defenders in 2014. Up to October, the office registered 45 murders of human rights defenders. Of those, 2 of the victims were women, 10 were indigenous people and 2 were public officials working on human rights issues. Eleven victims had previously received threats. For three of those killed, State protection measures were in effect. In one case, State protection had been withdrawn after an analysis determined he faced no extraordinary danger. Between January and December 2014, OHCHR-Colombia also documented the attempted killing of 18 defenders. In nine of those cases, State protection measures were in effect.

67. The number of threats against defenders in 2014 is of serious concern. While the figures do not represent all cases, OHCHR-Colombia recorded 297 defenders who had received threats either individually or collectively between January and October 2014. For example, on 8 and 9 September 2014, 87 human rights defenders received collective death threats by e-mail. According to the Foundation for Press Freedom, between 1 January and 10 October 2014 2 journalists were killed, 64 received death threats, 45 reported interference in their work, 6 were reportedly illegally detained and 1 reported an attempt on his life.

68. The national guarantees process (*Mesa Nacional de Garantías*), an initiative for dialogue between the Government and civil society, resumed work on measures to ensure the right to defend human rights. The High Commissioner expresses concern that, despite the establishment of the process in 2008, it has yet to produce tangible results for better prevention and protection mechanisms or, in particular, a public policy to guarantee the defense of human rights. He considers that the process should focus on the development and subsequent implementation of such a policy as a matter of priority.

69. The High Commissioner recognizes State efforts to improve protection for defenders at risk. Until October 2014, the National Protection Unit was providing protection to 7,519 people, including 1,775 defenders. The annual budget of the National Protection Unit increased from US$ 181 million in 2013 to US$ 205 million in 2014. The High Commissioner is concerned that reported bureaucratic and potential financial mismanagement issues may represent an obstacle to protecting the physical integrity of defenders.

70. Investigation and prosecution of perpetrators and dismantlement of the structures supporting crime against defenders are keys to preventing new threats and attacks. The High Commissioner is concerned by the lack of results of criminal investigations into violations against defenders, in particular threats. OHCHR-Colombia will continue to monitor criminal investigations into these cases.

3. Public security and criminal justice

(a) Citizen security

71. OHCHR-Colombia observed that, despite growing government efforts to implement citizen security policies at a local level, implementation is still left to police commanders, since municipal mayors fail to assume their guiding role to facilitate citizen participation and accountability. Legal participatory mechanisms, such as municipal committees on police and citizen participation have not been activated. As a result, focus on police presence and control prevails over social, community and situational prevention strategies. Prevention mechanisms at the local level are extremely weak, allocation of budget is insufficient, and measures identified in municipal development plans and integral citizen security plans are often not implemented. Those weaknesses were observed in, among others, Tumaco, Nariño; Buenaventura, Valle del Cauca; Montería, Córdoba; Ibagué, Tolima; and Apartadó, Antioquia. A potential peace agreement will require a strong focus on citizen security. Evaluation of the citizen security strategies of the National Police is needed in order to identify good practices and lessons learned.

(b) Police

72. The High Commissioner welcomes the National Police's commitment to improving human rights conditions. OHCHR-Colombia and the Inspector General of the National Police developed a joint monitoring project to implement five selected mechanisms for prevention and human rights response in the National Police, which evaluated the effectiveness of human rights command-and-control mechanisms.

73. OHCHR-Colombia continued to monitor police use of force and firearms. At the request of the National Police, the office provided technical assistance for the draft regulation on the use of force and firearms. The implementation of the regulation is expected to contribute to ensuring the appropriate use of force, in particular in the context of crowd control and management of mass demonstrations. Despite efforts by the police to improve its procedures, presumed human rights violations still occurred. On 5 August, in Currulao, Turbo, Antioquia, during a strike by banana plantation workers, one man died as a result of police gunfire, 14 people were injured and others were allegedly ill-treated. On 4 April in Totoro, Cauca, the police allegedly mistreated two members of the Indigenous Cabildo of Totoro. In Cali, Valle del Cauca, a 14-year-old girl lost an eye to splinters from a stun grenade launched by the police during a Labour Day demonstration.

(c) Penitentiary system

74. OHCHR-Colombia continued to observe the penitentiary system situation, where inmates live with unacceptable levels of overcrowding and inadequate health care. In

October 2014, statistics compiled by the National Institute for Prisons and Penitentiary[27] indicated 49.3 per cent overcrowding in Colombian prisons: 116,449 people are detained in establishments designed for only 78,022.[28] On 27 January 2014, Barranquilla Model Prison, with 147 per cent overcrowding, suffered a fire that killed 17 and injured at least 30 more. The Ombudsperson called for urgent structural measures to prevent the reoccurrence of such episodes.

(d) Post-demobilization groups and organized crime

75. The main public security challenge remains violence by post-demobilization armed groups linked to organized crime. Violence affects the rights of those living where such groups dispute control of illicit revenues derived from the drug trade, extortion, illegal mining, prostitution, trafficking in persons and illegal migration. The High Commissioner is concerned by the long-term humanitarian impact, including mass displacement and protection risks.

76. OHCHR-Colombia also observed greater connections between these groups and transnational criminal networks, and synergies with guerrillas in areas such as southern Bolívar, Bajo Cauca, Antioquia and Urabá. Human rights defenders, community leaders, State agents and land restitution claimants were often threatened or attacked by the groups because they opposed the groups' criminal or political interests. On 9 March, in Turbo, Antioquia, the representative of an organization that denounced alliances between the post-demobilization group Clan Usuga (also known as the Urabeños or Autodefensas Gaitanistas de Colombia) and the guerrilla groups was killed. On 12 May, in Cáceres, Antioquia, a civil servant was threatened by the Urabeños owing to her social work assisting a 10-year-old child forced to join the group. The High Commissioner is particularly concerned by the ongoing violence and murders by dismemberment in the city of Buenaventura, Valle del Cauca. OHCHR-Colombia was informed of 11 cases, of which 3 were successfully investigated, resulting in the arrest of seven people (three minors).

77. The police have taken action against these groups and a number of their members have been arrested. During 2014, 850 members of the Urabeños, 211 of the Rastrojos, 51 of the Bloque Meta, and 63 of the Libertadores del Vichada were arrested. However, a comprehensive approach that combines police actions with justice administration and anti-corruption is needed, as is measurable improvement in economic, social and cultural rights in the communities where these groups recruit. Post-demobilization groups maintain capacity to corrupt State agents. Examples include the arrest of the Governor of La Guajira Department for alleged links with a criminal organization and the arrest in Córdoba Department of a member of the Attorney General's Office and four policemen for alleged collaboration with the Urabeños.

IV. Recommendations

78. **In the light of the findings of OHCHR-Colombia and the need to build on Government initiatives, the High Commissioner recommends that:**

(a) Peace negotiations should take into account the different views of those affected by the armed conflict, such as victims of violations and displacement, women,

[27] "Informe estadístico octubre 2014". www.inpec.gov.co/portal/page/portal/INPEC_CONTENIDO/NOTICIAS%20Y%20NORMATIVIDAD/ESTADISTICAS/INFORMES_ESTADISTICOS/INFORME%20OCTUBRE%202014.pdf.

[28] The overcrowding rate reached 270 per cent in Cali prison (6,160 inmates in facilities with a capacity of 1,667) and 476 per cent in Riohacha (576 inmates in facilities fit for 100).

human rights defenders, ethnic communities and children used by armed groups, and actively seek their participation. Special attention should be given to their specific circumstances in truth, justice and reparation processes;

(b) In order to transition to a post-conflict scenario, Colombia should develop judicial and non-judicial means for society as a whole to confront past violations of human rights and international humanitarian law. Recognition of responsibility, remorse, guarantees of non-recurrence and participation in transformative actions could be linked to alternative or reduced sentences for all parties to the conflict, taking into account that no amnesty is possible for genocide, crimes against humanity, war crimes and other gross violations of human rights;

(c) The Revolutionary Armed Forces of Colombia–People's Army (FARC-EP) and the National Liberation Army (ELN) should respect human rights and international humanitarian law, including with regard to civilian infrastructure, the civilian population and members of State armed forces or organized armed groups who do not participate, or have ceased to participate, in hostilities. They should also cease the use of children in their ranks;

(d) State responses to violence by post-demobilization groups linked to organized crime should use a comprehensive approach that takes into account police-led public security, the judicial fight against impunity, accountability of civil servants to prevent corruption and measures to fight poverty and exclusion. The State should invest in maximizing economic and work opportunities for youth that provide them with viable alternatives to joining criminal groups;

(e) In order to ensure accountability for extrajudicial executions, enforced disappearances, sexual violence, child recruitment and killings of human rights defenders, the Attorney General's Office should adopt investigation strategies based on pattern analysis and case prioritization, addressing different levels of responsibility and identifying economic and other interests behind violations;

(f) The State should strengthen its efforts to prevent and respond to attacks and threats against human rights defenders, including through comprehensive cooperation between national, departmental and local authorities and more effective investigations by law-enforcement agencies, in order to increase prosecution success rates progressively, to reach those of other crimes (for example, insurgency-related charges);

(g) The Government should use the full potential of the Victims and Land Restitution Law as a tool for social change for victims, creating alternative community and institutional mechanisms that respond to their needs and incorporate a human-rights-based approach into reparation and restitution processes. The Government should address economic incentives and lack of political will at local levels and explore alternatives to reduce bureaucracy and ensure victims' direct participation;

(h) The National Development Plan and all central and local planning instruments should include benchmarks of progressive realization and measurable indicators with time estimations for their fulfilment and regular monitoring and reporting on progress. The Department for Social Prosperity and the Ministries of Housing, Labour, Education and Health should strengthen their joint efforts to eliminate poverty and inequality. The State should take measures to guarantee access to education for children with disabilities in line with its international obligations;

(i) The State should take immediately effective measures to guarantee the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, with particular attention to people living in rural areas, indigenous peoples, Afro-Colombians, women and children. The State should take immediate steps

to provide access to drinking water to all its municipalities within a 10-year period and to eradicate preventable diseases, while periodically reporting on progress;

(j) The State should take steps towards the adoption and implementation of a business and human rights policy that develops the guidelines already adopted;

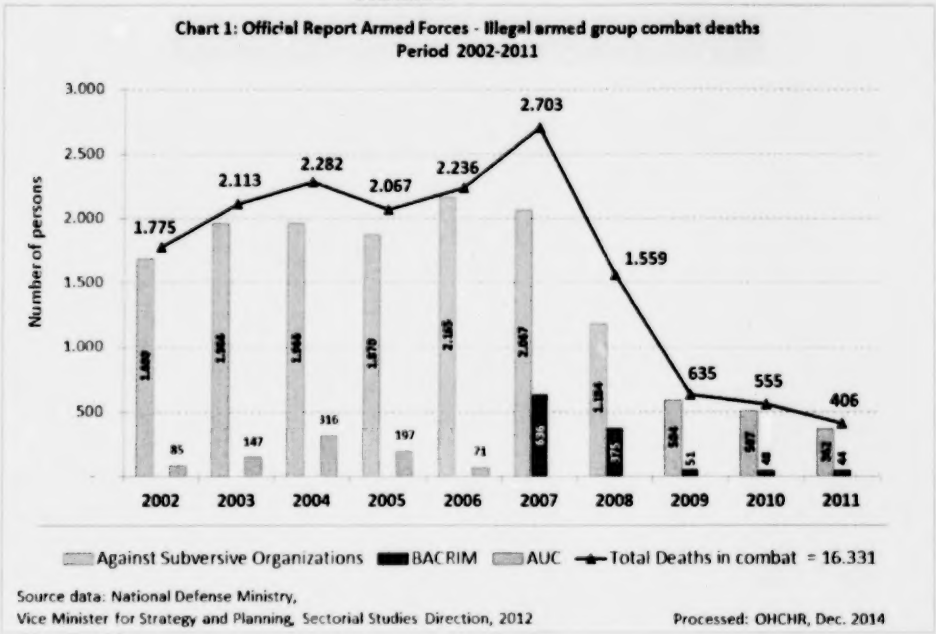
(k) Colombia should ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and establish a national torture preventive mechanism as stipulated therein, as a step towards addressing the penitentiary crisis.

Appendix

[English and Spanish only]

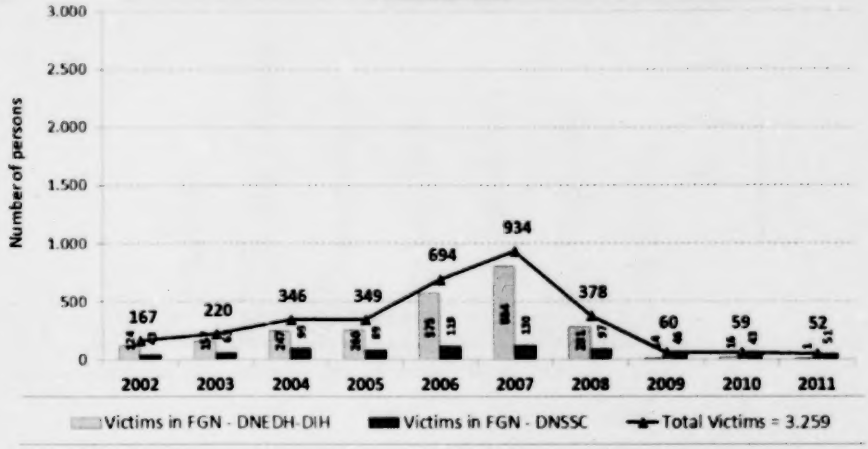
Comparative charts on persons combat deaths and alleged cases of extrajudicial executions

CHARTS*



* Unofficial translations from the Spanish.

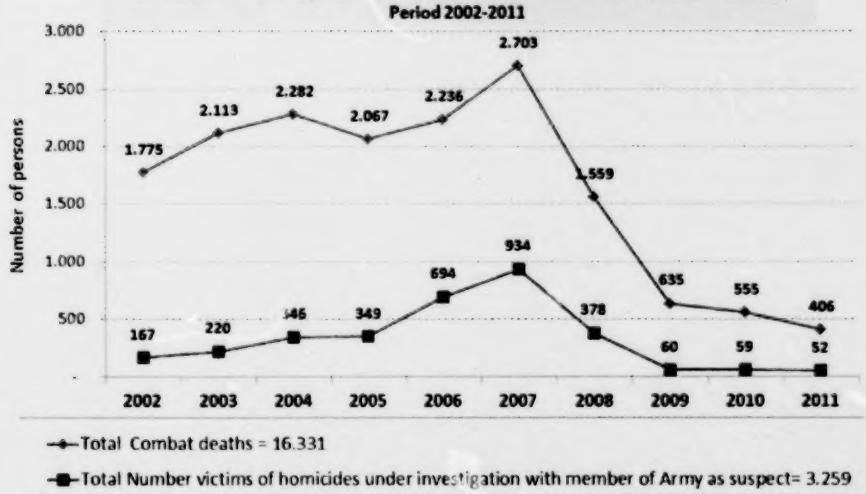
Chart 2: Office of Attorney General of Colombia
Number victims of homicide under investigations with member of Army as suspect
Period 2002-2011



Source date: Office Attorney General of Colombia (FGN, Acronym in Spanish), Oct. 2014
National Directorate of Specialized Prosecutor for Human Rights and International Humanitarian Law. (DNEDH-DIH, Acronym in Spanish),
National Directorate of Sectionals and Citizen Security. (DNSSC, Acronym in Spanish)

Processed: OHCHR, Dec. 2014

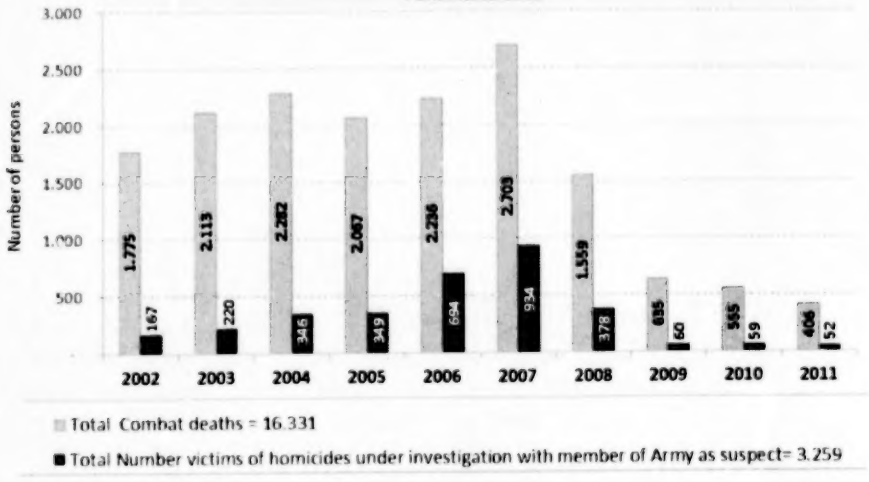
Chart 3: Official Report of Armed Forces combat deaths compared with number victims of homicide under investigation by Attorney General with member of Army as suspect
Period 2002-2011



Source data: National Defense Ministry, Vice Minister for Strategy and Planning, 2012
and Office Attorney General of Colombia (FGN, Acronym in Spanish), Oct 2014

Processed: OHCHR, Dec 2014

Chart 4: Official Report of Armed Forces combat deaths compared with number of victims of homicide under investigation by Attorney General with member of Army as suspect Period 2002-2011



Source data: National Defense Ministry, Vice Minister for Strategy and Planning, 2012 and Office Attorney General of Colombia (FGN, Acronym in Spanish), Oct 2014

Processed: OHCHR, Dec 2014